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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75881; File No. SR-NYSEArca-2015-75]

September 10, 2015

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 1, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective September 1, 2015. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the criteria used for Lead Market Makers and Market Makers (collectively, "Market Makers") to qualify for the Monthly Posting Credit Tiers For Executions in Penny Pilot Issues and SPY (the "Posting Tiers"). The Exchange proposes to implement the fee change effective September 1, 2015.

Currently, Market Makers qualify for the Posting Tiers by achieving certain volume-based criteria based on average electronic executions per day.<sup>4</sup> The Posting Tiers include the Select, Super and Super II tiers and the volume requirements to achieve each are as follows:

- Select Tier: a Market Maker must meet an Average Daily Volume ("ADV") of 30,000 contracts from Market Maker Posted Orders in both Penny Pilot and non-Penny Pilot issues;
- Super Tier: a Market Maker must meet either (i) an ADV of 80,000 contracts from Market Maker Posted Orders in both Penny Pilot and non-Penny Pilot issues or (ii) an ADV of 200,000 contracts combined from all orders in Penny Pilot

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<sup>4</sup> The Exchange notes that there is a posting credit associated with a Base Tier for which there is no volume requirement.

Issues,<sup>5</sup> and at least 100,000 of those contracts have to be from Posted Orders in Penny Pilot Issues; and

- Super Tier II: a Market Maker must meet an ADV of 200,000 contracts from Market Maker orders in all issues, and at least 110,000 of those contracts have to be from Posted Orders from both Penny Pilot and non-Penny Pilot issues.

The Exchange is proposing to replace the existing thresholds that are based on static ADV of contracts traded with market share criteria, specifically percentages of total industry customer equity and exchange traded fund (“ETF”) option ADV.<sup>6</sup> The Exchange believes this modification would enable Market Makers to achieve the Posting Tiers more consistently, despite monthly or seasonal fluctuations in industry volume. The Exchange is not proposing to adjust the source of the qualifying volume for each Posting Tier. Specifically, the Exchange proposes the market share requirements to achieve each Posting Tier as follows:

- Select Tier: a Market Maker would have to achieve at least 0.25% of Total Industry Customer Equity and ETF option ADV from Market Maker Posted Orders in both Penny Pilot and non-Penny Pilot issues;
- Super Tier: a Market Maker would have to achieve either (i) at least 0.65% of Total Industry Customer Equity and ETF option ADV from Market Maker Posted

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<sup>5</sup> Unlike the Select Tier and Super Tier II, in calculating the Super Tier, the Exchange will include the ADV of the Market Maker’s affiliate(s).

<sup>6</sup> The volume thresholds are based on Market Makers’ volume transacted electronically as a percentage of total industry Customer equity and ETF options volumes as reported by the Options Clearing Corporation (the “OCC”). Total industry customer equity and ETF option volume is comprised of those equity and ETF contracts that clear in the Customer account type at OCC and does not include contracts that clear in either the Firm or Market Maker account type at OCC or contracts overlying a security other than an equity or ETF security. See OCC Monthly Statistics Reports, [available here](http://www.theocc.com/webapps/monthly-volume-reports), <http://www.theocc.com/webapps/monthly-volume-reports>.

- Orders in both Penny Pilot and non-Penny Pilot issues or (ii) at least 1.60% of Total Industry Customer Equity and ETF option ADV from all orders in Penny Pilot Issues, all account types, with at least 0.80% of Total Industry Customer Equity and ETF option ADV from Posted Orders in Penny Pilot Issues<sup>7</sup>; and
- Super Tier II: a Market Maker must achieve at least 1.60% of Total Industry Customer Equity and ETF option ADV from Market Maker orders in all issues, and at least 0.90% of Total Industry Customer Equity and ETF option ADV from Posted Orders from both Penny Pilot and non-Penny Pilot issues.

The Exchange is not proposing any changes to the amount of the Posting Credits for any of the tiers.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that modifying the qualification criteria for Market Maker Posting Credit Tiers is reasonable, equitable, and not unfairly discriminatory because it makes the Posting Tiers more consistently achievable as the Tiers will be less dependent on fluctuations in overall industry volume. The Exchange believes modifying the Posting Tiers based on achieving

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<sup>7</sup> As is the case today, in calculating the Super Tier, the Exchange will include the ADV of the Market Maker's affiliate(s).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

percentages of market share is also not unfairly discriminatory as it is based on the amount of business conducted on the Exchange and therefore rewards similar efforts month-to-month, while not resulting in windfalls during periods of heavy volumes, or penalizing firms focused on trading at NYSE Arca during months of overall lower volumes.

The Exchange believes modifying the Posting Tiers based on achieving percentages of market share is reasonable, equitable, and not unfairly discriminatory because the Exchange utilizes this criterion as a basis for determining posting credits to other market participants and this criterion is commonly used for this purpose by competing exchanges.<sup>10</sup>

The Exchange also believes that the proposed change to the qualification criteria is reasonable, equitable, and not unfairly discriminatory, as the Posting Credits are intended to encourage quoting at the National Best Bid and Offer (“NBBO”) which in turn benefits both Customers and non-Customers by having narrower spreads available for execution.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

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<sup>10</sup> See, e.g., Fee Schedule, [available here](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf), [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf) (Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues and Customer and Professional Customer Posting Credit Tiers In Non Penny Pilot Issues, both based on percentage of Total Industry Customer equity and ETF option ADV); NASDAQ Options Market fee schedule, [available at](http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing), <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing> (NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options based on total industry customer equity and ETF option ADV contracts per day in a month); BATS Options Exchange fee schedule, [available at](http://www.batsoptions.com/support/fee_schedule/), [http://www.batsoptions.com/support/fee\\_schedule/](http://www.batsoptions.com/support/fee_schedule/) (Market Maker and Non-BATS Market Maker Penny Pilot Add Volume Tiers Market Maker and Non-BATS Market Maker Non Penny Pilot Add Volume Tiers, both based on percentage of total consolidated monthly volume calculated).

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would encourage competition, including by attracting a wider variety of business to the Exchange, which would make the Exchange a more competitive venue for, among other things, order execution and price discovery. In addition, by adjusting the qualifications to a market share basis rather than per contract volume levels, the Exchange believes the proposed change encourages competition without undue burden by being based on a share of overall business rather than a static volume amount.

Moreover, because the proposed change continues to base the Posting Tiers on the amount of business conducted on the Exchange, it would apply equally to similarly-situated Market Makers and would not impose a disparate burden on competition either among or between classes of market participants.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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<sup>11</sup> 15 U.S.C. 78f(b)(8).

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-75 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEArca-2015-75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-75 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Robert W. Errett,  
Deputy Secretary.

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<sup>15</sup> 17 CFR 200.30-3(a)(12).



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